

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ERNEST EDWARDS,

Petitioner,

v.

Case Number: 05-CV-71105-DT

GERALD HOFBAUER,

Respondent.

**ORDER DENYING APPLICATION TO PROCEED *IN FORMA PAUPERIS*
AND DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY**

On October 18, 2005, the court issued an order denying Petitioner Ernest Edwards's request that the court grant him leave to file a new lawsuit *in forma pauperis*. Petitioner has filed an appeal of that order, and has filed an application with this court to proceed on appeal *in forma pauperis*. The court will deny his application to proceed *in forma pauperis* and will decline to issue a certificate of appealability.

Under 28 U.S.C. § 1915(a)(3), an appeal may not be taken *in forma pauperis* "if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). The court here finds that Petitioner's appeal is not taken in good faith. The "good faith" standard is satisfied if the issues raised on appeal are arguable on the merits and therefore not frivolous; a showing of probable success is not required. *Harkins v. Roberts*, 935 F. Supp. 871, 873 (S.D. Miss. 1996) (quoting *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983)). "If the district court can discern the existence of any nonfrivolous issue on appeal, the movant's petition to appeal *in forma pauperis* must be granted." *Id.* (citing *Howard*, 707 F.2d at 220).

As explained in the court's October 18, 2005 order, Petitioner has been a frequent filer of civil rights complaints and habeas petitions in this District. In an order entered in a civil rights case filed by Petitioner in 1996, District Judge Lawrence P. Zatkoff reviewed Petitioner's history of filing complaints and petitions in this district. See "Order Dismissing Complaint Under 28 U.S.C. § 1915(g) and Enjoining Plaintiff from Filing Future Complaints Without Prior Authorization," *Edwards v. Hofbauer*, No. 96-CV-74292-DT (E.D. Mich. Oct. 31, 1996). Judge Zatkoff found that Petitioner's "history of unsubstantiated and vexatious litigation amounts to continued abuse of his *in forma pauperis* status." *Id.* Judge Zatkoff, therefore, enjoined Petitioner from filing any additional *in forma pauperis* lawsuits in this District without leave of court. *Id.* at 4. Judge Zatkoff further set forth specific procedures which Petitioner must follow prior to obtaining *in forma pauperis* status. In its October 18, 2005 order, the court found that Petitioner had not adhered to those procedures, and thus denied him leave to file a new lawsuit *in forma pauperis*. The court finds that Petitioner's appeal of that order is not in good faith and, rather, constitutes a further attempt to obtain and exploit *in forma pauperis* status.

Additionally, the court notes that on November 28, 2005, the United States Court of Appeals for the Sixth Circuit notified Petitioner that it would not review Petitioner's appeal until this court issued an order addressing whether to certify any issue for appeal. Under Federal Rule of Appellate Procedure 22, a district court that denies a motion under 28 U.S.C. § 2254 must issue an order either granting or denying a certificate of appealability before an applicant may appeal. See Fed. R. App. P. 22(b) ("If an applicant files a notice of appeal, the district judge who rendered the judgment

must either issue a certificate of appealability or state why a certificate should not issue.”). To the extent a ruling on a certificate of appealability is mandated by the Sixth Circuit, the court declines to issue a certificate because reasonable jurists would not disagree with the court’s conclusion that relief was not warranted. See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (holding that district court should not grant a certificate of appealability unless “[t]he petitioner . . . demonstrate[s] that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.”). Specifically, reasonable jurists would not debate that Petitioner has failed to comply with Judge Zatkoff’s directives. Accordingly,

IT IS ORDERED that Petitioner’s “Application to Proceed *In Forma Pauperis*” is DENIED.

IT IS FURTHER ORDERED that the court DECLINES to issue a certificate of appealability.

S/Robert H. Cleland
ROBERT H. CLELAND

UNITED STATES DISTRICT JUDGE

Dated: December 27, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 27, 2005, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522